

LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT BETWEEN THE CITY OF BURBANK AND THE BURBANK FIRE FIGHTERS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 778

THIS LABOR MANAGEMENT WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION AGREEMENT ("Agreement") is entered into by and between the City of Burbank ("City") and the Burbank Fire Fighters, International Association of Fire Fighters Local 778 ("BFF"). This Agreement is created pursuant to California Labor Code §3201.7 (a) (3) (C).

Nothing in this agreement diminishes the entitlement of a covered employee to compensation payments for total or partial permanent disability, total or partial temporary disability, Labor Code §4850 benefits, or medical treatment fully paid by the employer and otherwise provided for in Division 4 of the Labor Code. Nothing in this agreement denies to any covered employee the right to representation by counsel at all stages during this alternative and expedited resolution process.

The City and BFF negotiated this agreement by forming a partnership known as the Joint Labor Management team (JLM); this team is comprised of three (3) Executive Management staff members, the Assistant City Manager, the Management Services Director and the Workers' Compensation Administrator; The Labor Team is comprised of the BFF Board President, or designee, one Vice President and one (1) Director. The JLM will continue through implementation of this Agreement, as explained more fully below. The Labor Representatives are appointed by the Union President or designee and may be subject to reappointment at the President's or designee discretion.

The purpose of the JLM is to develop policy and procedures of the Alternative Dispute Resolution program; to review implementation and the progress of the program and address any issues at least quarterly in conjunction with the review of the Independent Medical Evaluator List set forth in Article IV.I, or at other times agreed to by the committee, and to ensure that the program terms and conditions are administered in harmony with this agreement.

Now, therefore, in consideration of the mutual terms, covenants and conditions herein, the parties agree as follows:

Article I: Purpose

The purposes of this Agreement are:

A. To provide active employees and retirees claiming compensable injuries under Division 4 of the California Labor Code (“Workers’ Compensation Law”) with an expedited procedure to resolve disputes in accordance with the provision of this Agreement and to facilitate those employees’ prompt recovery and return to work;

B. To reduce the number and severity of disputes between the City and covered employee, when those disputes relate to workers’ compensation;

C. To provide workers’ compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs for the City;

These purposes will be achieved by utilizing an exclusive list of medical evaluators to be the sole and exclusive source of medical-legal evaluations for disputed issues surrounding covered employees in accordance with Labor Code §3201.7(a).

Article II: Term of Agreement and Termination

The parties further understand that this Agreement governs a pilot program and that it shall become effective after it is approved by City Council, executed by

the parties, submitted to the Administrative Director of the State of California, Department of Industrial Relations, Division of Workers' Compensation in accordance with Title 8, California Code of Regulations §10202(d), and accepted by the Administrative Director as evidenced by the Director's letter to the parties indicating approval of the Agreement. This Agreement shall be in effect for one year from the date of the Administrative Director's letter of acceptance to the parties. Thereafter, it shall continue and remain in force from year to year unless terminated by either party as provided for below.

This Agreement shall govern any claim arising from an industrial injury sustained during the term of this Agreement. Such claim shall continue to be covered by the terms of this Agreement, until all medical issues related to the pending claim are resolved. (See Scope of Agreement below.)

This Agreement may be terminated as follows: 1) any party may unilaterally terminate the Agreement upon 30 days written notice to the other party with or without cause, 2) by mutual agreement of the parties or 3) by an act of the CA Legislature resulting in abolition of the authority to enter into this Agreement. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the applicable Labor Code provisions to the same extent as they were prior to the implementation of this Agreement, except as otherwise specified herein.

Article III: Scope of Agreement

A. It is the intent that this Agreement applies prospectively to injuries occurring after the effective date of this agreement. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claimed filed after the effective date of this Agreement by the following referred to herein as "Covered Individuals" 1) active employees; 2) retirees 3) active employees and retirees where a timely petition to reopen a pre-existing claim to seek new and further

disability or to reduce a prior award is filed after the effective date of this agreement.

Active employees and retirees with an existing claim filed prior to the effective date of this agreement (pre-existing claim) that have not already had a medical-legal evaluation under the State's AME/QME system may have their claim resolved under the provisions of this agreement with mutual agreement by both parties. Such requests should be made in writing to the other party. If a request is made to utilize the alternative dispute resolution program for a pre-existing claim and both parties agree to that request, all future disputes on said claim must be resolved according to the provisions of this agreement.

B. The scope of this agreement does not apply to retirees that have a future medical dispute that is outside the five year statute of limitations or Labor Code Section §5804.

C. For purposes of this Agreement a "claimed injury" is one for which either a (1) DWC-1 workers' compensation claim form or (2) an Application for Adjudication of Claim has been filed with the Workers' Compensation Appeals Board ("WCAB").

D. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.

E. This Agreement is restricted to 1) establishing an exclusive list of independent medical evaluators for resolution of medical disputes of Covered Individuals, and 2) establishing a process for informal legal discovery in accordance with Article VII.

Article IV. Expedited Medical-Legal Process

A. Physicians who serve in the capacity as Independent Medical Examiner ("IME") pursuant to this Agreement will receive enhanced compensation

for services performed as outlined in the physician contract in exchange for expedited examinations and report preparation.

B. This Agreement does not constitute a Medical Provider Network (“MPN”). Physicians who act as a Covered Individual’s treating physician, or have provided treatment to the Covered Individual at any time, for any injury incurred by the Covered Individual during their employment with the City, shall not act as the IME in the Covered Individual’s claim. Pre-designation of a physician must comply with the requirements set forth in Labor Code section 4600(d) (1) and may not serve as an IME.

C. All employees with a disputed medical issue as described in Article IV, Paragraph E must be evaluated by an approved physician from the exclusive list of IMEs. Should the employee claim injuries requiring more than one medical specialist, the employee shall be provided an IME appointment in each area of specialty. Attached hereto as Exhibit A is an exclusive list of IMEs agreed upon by the parties. If the IME requires the opinion of an additional sub-specialist, the IME shall refer the employee to a physician on the IME list; IMEs may refer employees to physicians outside of the IME list with mutual consent by the City’s claims staff and the affected employee. The consulting specialist charges are subject to the Official Medical Fee Schedule (OMFS). The IME may not refer the employee to his treating physician for this purpose.

D. The exclusive list of IMEs shall include the specialties as agreed upon by the parties.

E. An IME shall be used for all medical disputes that arise in connection with a workers’ compensation claim including but not limited to determination of causation, the nature and extent of an injury, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work, (including transitional duty), current and future medical care, and resolution of all disputes

arising from utilization review, pursuant to Labor Code section 4062(b). The parties agree that the Covered Individual shall use the IME originally chosen for a specific injury pursuant to Section J. 5, below for all subsequent disputes arising out of that same injury. In the event that said IME is no longer available, the parties shall utilize the next specialist on the list pursuant to Article IV, paragraph (J)(5), as set forth herein.

F. The IME process described above will be triggered when either party provides the other written notice of an objection in connection with any issues set forth in Article IV paragraph E above. Objections from the City shall be sent to the employee with a copy to the employee's legal representative, if represented. Objections from the employee or employee's legal representative shall be sent to the employee's assigned City claims examiner with a copy to the City's legal representative, if any.

G. Objections shall be sent within thirty (30) calendar days of receipt any of the following: 1) a medical report or a utilization review decision for which a dispute arises addressing any of the issues set forth in Article IV section E; 2.) A letter delaying acceptance of the claim, which automatically creates a dispute, or denying or delays of benefits including a denial of the claim, which automatically creates a dispute. Delayed decisions based on legal issues shall not trigger the IME process. A subsequent acceptance of the claim and/or resolution of the disputed issue may eliminate the need for completion of the dispute resolution process set forth in this Agreement.

H. The exclusive list of IMEs shall serve as the exclusive source of medical-legal evaluations for all disputed medical issues arising from a claimed injury, unless otherwise agreed to by the parties in writing.

I. The parties hereby agree that from time to time the exclusive list of IMEs may be amended. For either party to propose adding an IME to the exclusive

list, the party must provide notice, in writing, to the other party of its request to add a physician to the list. The parties must mutually agree in writing to the addition of physicians to the IME list. A physician may only be deleted from the exclusive list of medical evaluators if s/he breaches the terms and conditions of the contract with the City, by written mutual agreement of the parties, or upon death of the physician. The list shall be reviewed quarterly by the JLM from the execution date of the Agreement and quarterly thereafter for additions and deletions of newly selected or deleted IMEs. Any IME proposed for consideration of addition or deletion after the review period will be reviewed at the next interval review period of the JLM unless there is a breach of the terms and conditions of the Agreement or by mutual written agreement of the parties.

J. Appointments.

1. The City's Workers' Compensation staff shall schedule appointment(s) with the IME and provide notice of the appointment within ten (10) calendar days of the date of receipt of the objection issued by any party subject to the terms and provisions of this Agreement. The notice of the appointment location, date and time shall be sent to the employee and to his legal representative, if there is one. The IME shall make an appointment available to the employee within 30 days of the City's Workers' Compensation staff contacting them to make the appointment.

2. The employee shall be responsible for providing the City's Workers' Compensation staff with his/her work schedule prior to an appointment being made so that appointments can be made, if possible, during an employee's non-working hours.

3. Compensation for attending medical appointments under this Agreement shall be consistent with City policy.

4. Mileage reimbursement to covered employees shall be in accordance with Labor Code § 4600(e) (2), unless transportation is provided by the City.

5. For purposes of appointments, the City's Workers' Compensation staff shall select the IME(s) by starting with the first name from the exclusive list within the pertinent specialty, and continuing down the list, in order, until the list is exhausted, at which time the City's Workers Compensation staff will resume using the first name on the list.

6. The IME shall submit the medical reports thirty (30) days following examination of the employee, pursuant to the contract terms, unless a longer period of time is agreed to by the parties.

K. The City is not liable for the cost of any medical examination used to resolve the parties' disputes governed by this Agreement where said examination is furnished by an IME that is not authorized by this Agreement. Medical evaluations shall not be obtained outside of this Agreement for disputes covered by this agreement, notwithstanding Labor Code Section §4605.

L. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement, subject to legal challenges brought by the parties.

M. Either party who receives records prepared or maintained by the treating physician(s) or records, either medical or nonmedical, that are relevant to the determination of the medical issue shall serve those records on the other party prior to the IME examination. If one party objects to the provision of any nonmedical records to the IME, the party shall object within twenty (20) calendar days of the service of records. Objection to the provision of nonmedical records may result in the denial of the claim on the basis that the IME did not have complete

and accurate information. There shall be no objection to the provision of medical records to the IME, subject to the provisions of the Labor Code.

N. The City's Workers' Compensation staff shall provide to the IME records prepared or maintained by the employee's treating physician(s) and medical and nonmedical records relevant to the determination of the medical issue(s). The City's Workers' Compensation staff shall prepare a list of all documents provided to the IME, and shall serve a copy of the list on the employee and/or on his/her representative.

O. All communications with the IME shall be in writing and shall be served on the opposing party. This provision does not apply to oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination, or to administrative communications with the IME's staff. Except as provided in this section, ex-parte communication with the IME is prohibited.

P. If a party communicates with the IME in violation of section O, above, of this Article IV, the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from the next IME chosen from the list pursuant to section J,(5), above. If a new examination is required, the party making the communication prohibited herein may be liable for the cost, pursuant to Labor Code §5811, or as ordered by the WCAB.

Q. If either party disputes a medical or medical-legal finding of the IME, they shall notify the other party of this dispute by way of written objection within thirty (30) calendar days of actual receipt of the IME's report. All disputes of this nature shall be resolved either by way of supplemental interrogatory and report or by way of deposition.

Article V: Discovery

A. Covered Individual will cooperate with the City's Workers' Compensation staff with fully executed medical, employment and concurrent employment releases, disclosure statement and any other documents subject to the limitations set forth in the Labor Code, CCP and FOBR, and information reasonably necessary for the City to resolve the employee's claim, when requested. If the employee fails to return the release and it is determined that the medical information is not sufficient for the IME to provide a comprehensive evaluation, the parties shall meet to resolve the issue(s) prior to setting an evaluation. This Article does not supplant or diminish the parties' rights to pursue or contest discovery issues pursuant to the remedies provided in the Labor Code, through mediation or the WCAB.

B. This Agreement does not preclude a formal deposition of a covered employee or an IME when necessary. Attorney's fees for depositions of covered employees shall be paid at the rate of \$325 per hour, consistent with Labor Code §5710. This rate of reimbursement for attorney's fees for depositions of covered employees is subject to an annual review to determine if adjustments to said rate of reimbursement should be made. There shall be no attorney's fees for depositions of physicians or IMEs.

Article VI: General Provisions

A. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

B. This Agreement shall be governed and construed pursuant to the laws of the State of California.

C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement.

D. If any portion of this Agreement is found to be unenforceable or illegal the remaining portions shall remain in full force and effect.

E. This Agreement may be executed in counterparts.

F. Notice required under this Agreement shall be provided to the parties as follows:

City: Betsy McClinton, Management Services Director

BFF: Eric Rowley, BFF President

CITY OF BURBANK:

By: 
Ron Davis, City Manager

By: 
Betsy McClinton, Management Services Director

BURBANK FIRE FIGHTERS:

By: 
Eric Rowley, BFF President

APPROVED AS TO FORM:

By: 
Amy Albano, City Attorney